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Promotion and protection of all human rights, civil, political, economic, social and cultural rights

Question of the realization in all countries of economic, social and cultural rights

Report of the Secretary-General*

Summary

In the present report, methodologies used at the national level to measure the realization of economic, social and cultural rights are examined. The report starts with an overview of State obligations relating to the measurement of progressive and immediate realization of economic, social and cultural rights. The elements required to develop adequate measurement tools and indicators from a human rights perspective are then analysed. By means of the example of States' practices, he identifies principles for an adequate human rights measurement methodology. On that basis, a number of recommendations on human rights measurement and a rights-based approach to data and statistics are made.

* The present report was submitted after the deadline in order to reflect the most recent information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 28/12, in which the Secretary-General was requested to continue to prepare and submit to the Council an annual report on the question of the realization in all countries of economic, social and cultural rights under agenda item 3, with a special focus on a compilation of best practices adopted by States to measure progress in the realization of economic, social and cultural rights, including national indicators to advance the realization of such rights.

2. Various quantitative and qualitative methodologies have been used for measuring human rights, including economic, social and cultural rights. The most commonly used are human rights indicators.[1] The present report is based on a wide range of practices gathered from various sources, including States, national human rights institutions, international and regional human rights mechanisms, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other organizations.[2] The report starts with an analysis of State obligations pertinent to the measurement of progress in achieving economic, social and cultural rights. Then the core elements for human rights compliant measurement tools and processes are outlined by means of the example of States' practices.

II. From commitments to results: the need to measure progress

A. Measurement obligations

3. Measuring and monitoring the situation of human rights is inherent to human rights obligations. Without assessing progress, or regression, in the realization of human rights at the national level, States do not have the information necessary to develop the laws, policies and programmes that will enable them to meet their obligations. This is also intimately linked to the notion of evidence-based policies.

4. Moreover, without monitoring the application of laws, policies and programmes, it is not possible for States to make the adjustments necessary to achieve their intended results.[3] For instance, a number of cities in Canada, including Calgary, Edmonton, Ottawa and Vancouver, have been conducting surveys to assess the number of street homeless

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[1] In the present report, the term "human rights indicators" refers to specific information on the state of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights (see HRI/MC/2006/7, para. 7).

[2] For example, the United Nations High Commissioner for Human Rights reports to the Economic and Social Council on economic, social and cultural rights and human rights indicators (see E/2011/90, E/2007/82 and E/2009/90); the work on human rights indicators developed by OHCHR and endorsed by the treaty bodies (see A/HRC/27/41, HRI/MC/2006/7 and HRI/MC/2008/3); OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012); the expert meeting on human rights-based approaches to data and statistics and good practices and lessons learned, held in Geneva in October 2015; World Health Organization, *Women's and Children's Health: Evidence of Impact of Human Rights* (2013); and Catarina de Albuquerque and Virginia Roaf, *On the Right Track: Good Practices in Realising the Rights to Water and Sanitation*.

[3] For example, the lack of certain data preventing public sector bodies from properly tackling inequalities and leaving some groups invisible (see Verena Brähler, "Departments need to deal with their data gaps if government is serious about tackling inequality", Civil Service World, 30 October 2015, available at www.civilserviceworld.com/articles/opinion/departments-need-deal-their-data-gaps-if-government-serious-about-tackling).

persons in their respective cities. This information has allowed the cities to monitor the situation and adapt their housing and homelessness policies and programmes.[4]

5. Measuring and monitoring the state of economic, social and cultural rights in a country is a question of accountability of duty bearers towards rights holders. It is also a crucial element when considering the protection of those rights before the courts.

6. Human rights mechanisms have consistently reminded States that, in accordance with their treaty obligations,[5] they need to measure and provide reliable data and indicators. Human rights mechanisms, including the Committee on Economic, Social and Cultural Rights, and special procedure mandate holders regularly call upon States parties to adopt appropriate indicators and benchmarks as part of their national strategies and policies, including disaggregated statistics and time frames. As stated by the Special Rapporteur on the right to food, a fundamental requirement for identifying "appropriate steps" is to have a system in place to collect and analyse data on the actual status of realization of the right to food. Such data collection and analysis must be carried out periodically in order to continuously monitor progress made, or the lack thereof, with a view to adjusting ineffective policies and programmes (see A/HRC/25/57/Add.1, para. 8).

7. In some instances, development indicators are seen, incorrectly, as the equivalent of economic, social and cultural rights indicators. The two sets of indicators differ in crucial aspects. Firstly, human rights indicators are based on international legal standards and linked with a corresponding notion of accountability, a dimension lacking in development indicators. Secondly, cross-cutting human rights principles, such as non-discrimination, are usually absent from development indicators. Human rights indicators are designed to detect discrimination and inequalities in law and in practice; such detection is possible only if there is data disaggregated by gender, age, ethnicity, disability, migration status and other prohibited grounds of discrimination. Additionally, development indicators often look primarily at outcomes and place little emphasis on the process leading to these results. For example, outcome indicators may incidentally be positive because of a general improvement in the economic situation of the country and not necessarily owing to deliberate and targeted State actions. Outcome indicators can also show stagnation or regression in the enjoyment of economic, social and cultural rights as a result of a bad economic situation or factors outside a State's control (such as externally imposed austerity measures) and not reflecting State efforts for the progressive realization of human rights. For States to assess progress in the enjoyment of economic, social and cultural rights for everyone on their territory or under their jurisdiction, their collection, analysis and dissemination of data must go beyond such economic data as gross domestic product. It needs to address such issues as educational achievement, access to justice, food security, freedom of expression, quality of health care and many others through practical, deliberate and targeted measures by the State.

8. A number of States are, however, adopting specific human rights measures in national policy frameworks. Since 2010, in Nepal, the National Human Rights Commission, the Office of the Prime Minister, the Council of Ministers, several ministries and civil society organizations have been developing a number of human rights indicators

[4] See Vancouver's Housing and Homelessness Strategy, 2012-2021 (http://vancouver.ca/people-programs/vancouvers-housing-strategy.aspx) and Edmonton's 10-Year Plan to End Homelessness by 2019 (www.edmonton.ca/city_government/news/2014/edmontons-10-year-plan-to-end-homelessness-makes-progress.aspx).

[5] Such as those included in article 16 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 3 (1990) on the nature of States parties' obligations of the Committee on Economic, Social and Cultural Rights.

with the initial support of OHCHR. The indicators are used to monitor the implementation of action plans, including the National Human Rights Action Plan and the Food and Nutrition Security Plan of Action, and for treaty bodies reporting obligations. The indicators developed on the right to adequate food are being expanded under the Global Right to Food and Nutrition Network of the Food and Agriculture Organization of the United Nations.[6] The Constitution enshrines a broad range of economic, social and cultural rights, as well as the obligation of the Government to monitor and prepare annual reports on the implementation of State policies and programmes to be submitted to the Parliament.[7]

9. In 2010, Kenya established a working group comprising representatives of the Kenya National Commission on Human Rights, the Ministry of Devolution and Planning and other State entities, with a view to encouraging the use of indicators among government agencies. In 2013, the Commission, assisted by the Center for Economic and Social Rights, published a primer entitled *Rights-based Policy Monitoring*, which includes several modules about the human rights indicators developed by OHCHR. In 2014, a handbook on national reporting on the progress of the development plan, Kenya Vision 2030, included a section on human rights monitoring and the use of indicators.[8]

10. The South African Human Rights Commission and the United Nations Children's Fund (UNICEF) developed a national assessment using key indicators to analyse the fulfilment of children's rights, including the rights to birth registration, water and sanitation, housing, parental and social care and adequate food.[9]

B. Measuring immediate obligations and progressive realization

11. Measuring progress in economic, social and cultural rights is related to obligations to respect, protect and fulfil. Both immediate obligations and progressive realization need to be monitored. Immediate obligations include eliminating any discrimination in law and in practice; guaranteeing economic, social and cultural rights (for instance, the right to establish trade unions) and elements of those rights (for instance, legal security of tenure) that are not subject to progression realization; taking steps towards the full realization of these rights; ensuring non-retrogression; and securing minimum core obligations. Both the steps taken and the results achieved for the populations concerned should be monitored. It also means that "national strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination".[10]

12. At the core of the concept of progressive realization[11] is the immediate and continuous obligation to take appropriate measures for the full realization of economic, social and cultural rights to the maximum extent of available resources. To assess elements

[6] See indicators for monitoring economic, social and cultural rights in Nepal. Available from www.nhrcnepal.org/books.php?&nstart=1&start=3&num_totrec=43&n=&page=B.

[7] See article 53 of the Constitution. Available from www.mofa.gov.np/the-constitution-of-nepal.

[8] For more information, see *Rights-based Policy Monitoring* (available at www.cesr.org/downloads/knchr.escr.primer.pdf?preview=1) and *Second National Handbook of National Reporting: Indicators for the Second Medium-Term Plan 2013-2017 of Kenya Vision 2030* (Ministry of Devolution and Planning, 2014, available at www.devolutionplanning.go.ke).

[9] South Africa's Children, *A Review of Equity and Child Rights* (2011). Available at www.unicef.org/southafrica/SAF_resources_factschildrens11.pdf.

[10] See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 41.

[11] As found in the International Covenant on Economic, Social and Cultural Rights, art. 2 (1); the Convention on the Rights of the Child, art. 4; and the Convention on the Rights of Persons with Disabilities, art. 4 (2).

of these rights that are to be progressively realized, several components thereof need to be measured. Steps adopted to realize economic, social and cultural rights should be deliberate, concrete and targeted measures, making the most efficient use of available resources in order to move as expeditiously and effectively as possible towards the full realization of rights.[12]

13. The obligation of measurement is present to remind States that the notion of the progressive realization of economic, social and cultural rights is not a mere policy statement but needs to be thoroughly documented through the monitoring of:

(a) Targeted steps taken at the national level;

(b) Targeted steps taken through international assistance and cooperation;

(c) The use of maximum available resources (including human, financial capacity and other types of resources of a State);[13]

(d) The use of all appropriate means, including through appropriate laws, policies and programmes;

(e) Clearly established time frames, indicators and benchmarks.[14]

14. For these purposes, a unified, well-designed national assessment and monitoring system needs to be put in place and regularly updated. Such a system makes policies, programmes and budgeting processes more efficient. It also helps to improve State reporting to various international human rights mechanisms.[15] Such a system needs to link the efforts made by States on the ground to measurable results felt by the concerned population groups and to corresponding human rights commitments.

15. Given the universality, inalienability, interrelation, interdependence and indivisibility of human rights, the assessment of a right cannot be entirely sectoral or linked with the improvement of one sole factor. Figures need to be contextualized. For instance, progress in the realization of the right to water cannot be only assessed by an increase in the number of access points. Other factors, such as affordability, the geographic distribution of these access points or their accessibility by various groups of the population, may also need to be included in the analysis.

16. In its periodic report to the Committee on Economic, Social and Cultural Rights, Viet Nam mentions a system of monitoring and evaluation indicators to assess the progress made in poverty reduction (see E/C.12/VNM/2-4, para. 343):

> The monitoring and assessment of the implementation of the objectives on growth and poverty reduction are carried out in all national, ministerial and local levels,

[12] See Committee on Economic, Social and Cultural Rights, general comment No. 3.

[13] See Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

[14] Reference is made to the Commission on Human Rights resolution 1994/20 and subsequent resolutions that invite State parties to identify specific national benchmarks designed to give effect to the minimum core obligation to ensure the satisfaction of the minimum essential levels of each of the rights.

[15] The Special Rapporteur on the right to food stated in his mission to Nicaragua report, "that the law provides for the design, implementation and evaluation of a unified information system on food and nutrition security. This should help to address fragmentation in the area of food insecurity and vulnerability diagnosis, given the multitude of indicators used until now in the context of various mapping exercises ... The Special Rapporteur recommends that a unified system of indicators, targets and benchmarks be developed to monitor compliance with the State obligation to progressively realize the right to food." (See A/HRC/13/33/Add.5, para. 34.)

rural and urban areas, gender and social groups. The system of indicators to monitor and evaluate the implementation of the Comprehensive Growth and Poverty Reduction Strategy includes:

(a) Indicators to assess the results of economic development and poverty reduction;

(b) Indicators to monitor and evaluate the inputs of the Strategy;

(c) Indicators to monitor and evaluate the results of the objectives of the Strategy;

(d) Indicators to assess the impacts of each programme, strategy towards the poor and society as a whole. This system is specifically developed for each region, province, urban, rural areas, and gender. Some indicators will be specified by ethnic and social groups and economic areas.

17. In the United Kingdom of Great Britain and Northern Ireland, the Equality and Human Rights Commission, in partnership with the Scottish Human Rights Commission, has worked on the development of the Human Rights Measurement Framework for England, Scotland and Wales. The framework aims to provide a set of indicators to measure human rights progress and help the Commission in fulfilling its monitoring and reporting mandate, including to Parliament. Its work includes extensive consultations with a range of government agencies and human rights and civil society organizations, as well as maintaining a dedicated website for online consultations. The indicators developed come from varied sources of data, including alternative sources such as events-based data collected by human rights organizations and United Nations human rights mechanisms. The indicators developed have been used in the Commission's latest report *Is Britain Fairer?* in relation to equality of opportunity and freedom from unlawful discrimination and harassment. Detailed information on indicators and their analysis are available by "domain", namely: life; health; physical security; legal security; education; standard of living; productive and valued activities; individual, family and social life; identity, expression and self-respect; and participation, influence and voice. A special effort was made to measure disparities, drawing from a range of data disaggregated by age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Evidence is also presented for people who are in vulnerable positions, such as asylum seekers and people resident or detained in public and private institutions, including children in foster care and homeless persons.[16]

18. Building on its experience in conducting population surveys in the field of human rights, the European Union Agency for Fundamental Rights is developing the first European Union-wide Fundamental Rights Survey to collect comparable trend data on people's experiences of rights in practice, and their opinions concerning the protection and realization of rights. The survey will address key questions for understanding people's various experiences of rights as "everyday rights", such as questions on use of information technology and data protection, equality of treatment in accessing various goods and services, consumer rights and knowledge about where to go when seeking a solution to a rights violation, for example, knowledge about equality bodies and national data protection authorities.[17]

[16] See "Human Rights Measurement Framework: Prototype panels, indicator set and evidence base" (available at www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-measurement-framework); and *Is Britain Fairer? The State of Equality and Human Rights 2015* (available at www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer-0).

[17] See Fundamental Rights Survey (http://fra.europa.eu/en/project/2015/fundamental-rights-survey).

19. Assessing economic, social and cultural rights, particularly through policies and programmes, may be a challenging task for States for various reasons:

(a) Civil servants may not have the necessary knowledge and training to link the immediate and progressive realization of these rights to their specific area of work;

(b) Coordinated work within and between various authorities may be lacking;

(c) Data may be collected in a way that does not allow a proper assessment of the various components of these rights;

(d) Responsibilities and competencies of authorities may be overlapping and/or not well defined.[18]

20. In 2011, based on the OHCHR human rights indicators framework, Portugal initiated the development of national human rights indicators within the framework of the Portuguese National Human Rights Committee, the country's mechanism for reporting and follow-up on human rights issues. The indicators are used to measure and evaluate the results of national human rights policies and to report to, and follow-up on, recommendations from the United Nations human rights mechanisms. Indicators have been developed on the rights to the highest standard of attainable physical and mental health; individual liberty and security; education; and preventing and combating violence against women. Indicators on the rights to non-discrimination and equality and adequate housing are currently being developed.[19]

21. Paraguay has created an online platform called SIMORE, for monitoring the implementation of recommendations from international and regional human rights mechanisms.[20] The platform is a result of inter-institutional work, involving State bodies from the executive and the legislative branches, the judiciary, the Public Prosecution Service, the Ombudsman and the Public Defender Service, and civil society organizations. The engagement of around 28 State ministries and public institutions in creating the platform improved integration of a human rights-based approach in policies and annual work plans. One of the aims behind the platform is also to validate the provision of public information by high-level officials, thereby increasing their political commitment to human rights work. The tool provides links to indicators to help measure the implementation and impact of the recommendations.

C. Prioritization and use to the maximum of available resources

22. The prioritization and use to the maximum of available resources needs to be considered when looking at the realization of human rights, and economic, social and cultural rights in particular. The various financial and budgetary tools at a State's disposal, such as national budgets, need to be analysed to assess the policy priorities of Governments and the level of resources engaged for the realization of rights. Therefore, information collected on the realization of rights needs to be placed in the context with State expenditures and the most efficient use of these resources.

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[18] See the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, focusing on the responsibilities of local and other subnational governments (A/HRC/28/62).

[19] See www.portugal.gov.pt/pt/ministerios/mne/quero-saber-mais/sobre-o-ministerio/cndh/portuguese-national-human-rights-committee/portuguese-national-human-rights-committee.aspx.

[20] See www.mre.gov.py/mdhpy/Buscador/Home.

23. The Committee on Economic, Social and Cultural Rights has expressed concerns about the continuous decrease over the previous decade of the resources allocated to social sectors, notably health and social protection, whereas budgetary allocations to defence and public security had increased considerably to reach 30 per cent of State expenditures (see, for example, E/C.12/COD/CO/4, para. 16). In 2001, the States members of the African Union pledged to allocate at least 15 per cent of their annual budget to the improvement of the health sector and urged donors to mobilize additional resources. The indicator "health share of total spending of Government as a source" is used to track which of these countries have reached this target and which countries have increased or reduced the proportion of government expenditures allocated to health.[21]

24. In the Constitution of Ecuador, it is stated that planning and public policies formulated through participatory approaches are key for realizing human rights and promoting social equality, cohesion and good living (*buen vivir*). In view thereof, various sectors of the Government (including the National Secretariat for Planning and Development, the Ministry of Justice, Human Rights and Religion and the National Institute for Statistics and Census), the national Ombudsman and various civil society organizations developed and implemented a set of human rights indicators. The system aims to support the integration of human rights into national planning processes, to follow up on the recommendations of the universal periodic review and to increase the capacity of members of the National Secretariat for Planning and Development and the managers of the National Information System to monitor and evaluate public policies from a human rights perspective. Another result of this inter-institutional collaboration is the Atlas of Socioeconomic Inequalities. Launched in 2013, the Atlas is an innovative database that maps persistent gaps in the enjoyment of economic, social and cultural rights in Ecuador. It contains disaggregated information, including by ethnicity, sex, gender, age and region, and creates new social indicators to measure poverty from a multidimensional perspective. It served as a baseline for the National Strategy for Poverty Eradication and informed the updating of the National Development Plan for 2014-2017. It is expected to continue to guide the formulation of targeted public policies in order to address inequality.[22]

25. The progress made by Greece in combating poverty and social exclusion can be assessed through a list of indicators. Targets were set to reduce the number of people most at risk of poverty, including children and young people, unemployed persons, older persons and members of single-parent families. Social safety nets to prevent exclusion, including by ensuring access to basic services, medical care, housing and education, have been prioritized to limit the impact of the crisis (see E/C.12/GRC/2).

III. Accountability

26. Part of measuring human rights is looking at States' efforts to realize the human rights of individuals and communities on their territory or under their jurisdiction. Such measurement holds States accountable for their obligations of conduct and result.

27. Examples are numerous in terms of reporting obligations and monitoring. The information collected by Paraguay through its online platform called SIMORE has been

[21] See the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases and, on the implementation of the declaration, www.who.int/healthsystems/publications/abuja_declaration/en/.

[22] See www.siderechos.gob.ec/SIDerecho/web/Home.do and Office of the United Nations High Commissioner for Human Rights, "Construcción de Indicadores de Derechos Humanos: Experiencias Regionales" (2013).

used in reports to the United Nations human rights mechanisms, in the preparation of national plans and in decision-making and the human rights monitoring of civil society organizations.[23] In Brazil, reports for the universal periodic review are publicly debated in the Senate and the Parliamentary Human Rights Commission regularly uses media and information technology to publicize its monitoring efforts.[24]

28. In Australia, the Parliamentary Joint Committee on Human Rights examines legislation for compatibility with human rights, makes inquiries into human rights cases referred to by the Attorney-General and produces reports for the Parliament. Several other countries have made efforts to ensure that parliamentarians play a role in protecting human rights and can interact efficiently with the United Nations human rights mechanisms.[25]

29. In Mexico, the National Institute of Statistics and Geography and the National Human Rights Commission are identifying indicators for more systematic monitoring of human rights, including the rights to health, work and education (see A/HRC/17/24 and Corr.1, para. 8). These indicators will be used to monitor the human rights situation in the country and the impact of public policies. A national system of information on human rights is currently under construction and will make indicators publicly available.

30. In India, the Mahatma Gandhi National Rural Employment Guarantee Act of 2005 aims at providing security of work by guaranteeing 100 days of waged-employment per year to rural households whose members volunteer for unskilled manual labour. Information about the implementation of the Act is available at an online portal, thereby increasing accountability. The portal includes information on the type and length of the employment provided and data on the beneficiaries disaggregated, inter alia, by geographical location, sex and scheduled castes and tribes.[26]

31. In Nepal, the Supreme Court issued an order of mandamus to the Government and directed it, among other things, to formulate a national strategy on employment, to enact a related law and to ensure the allocation of the appropriate national budget. The Court, in its ruling, underlined that the enjoyment of other human rights, such as the right to food, education and health, and civil and political rights, depends on the level of enjoyment of the right to work and employment.[27]

32. The Government of Morocco established the Inter-ministerial Delegation for Human Rights in 2011. The Delegation is a standing mechanism to facilitate reporting to and coordination of follow-up to recommendations made by human rights bodies. In line with its strategic plan 2012-2016, the Delegation is tasked with ensuring coordination between Government and other relevant stakeholders, such as the National Human Rights Council and civil society; promoting engagement with the international human rights mechanisms, in accordance with United Nations country programmes and the United Nations Development Assistance Framework; ensuring reporting deadlines are met and implementing recommendations; ensuring follow-up to the implementation of the National Action Plan for Democracy and Human Rights; and contributing to the integration of a

[23] See www.mre.gov.py/mdhpy/Buscador/Home.

[24] See National Human Rights Programme, at www.dhnet.org.br/dados/pp/pndh/.

[25] See the website of the Parliament of Australia, www.aph.gov.au/joint_humanrights. For information on the human rights work of parliamentary systems in other countries, see United Nations Development Programme, *Parliaments and Human Rights: A Primer* (2008).

[26] See the dedicated website of the Ministry of Rural Development at www.nrega.nic.in/netnrega/home.aspx.

[27] *Prem Bahadur Khadka and Others v. Prime Minister and Council of Ministers*, as described in the Food and Agriculture Organization, *Review of the Legislative Framework and Jurisprudence concerning the Right to Adequate Food in Nepal* (2014). Available from www.fao.org/3/a-i4016e.pdf.

human rights-based approach into national programmes and policies, including through strengthening the capacity of the national administration and other stakeholders, such as the National Human Rights Council, universities and civil society. In June 2014, OHCHR organized a first session for trainers, targeting key national stakeholders on the development of indicators to measure compliance with international standards. An initial core group of national trainers was established to guide local partners in developing indicators in accordance with the country's identified priorities and with recommendations from the universal periodic review, special procedure mandate holders and the treaty bodies (see A/HRC/27/41, para. 44).

33. African ministers of finance, planning and economic development established a road map for introducing the African Data Consensus, focusing on actions and initiatives that would help advance and complement national initiatives on the data revolution that are related to the Sustainable Development Goals. These include addressing data gaps in respect of key issues, such as governance, peace and security, environmental sustainability, gender and human rights.[28]

34. The Working Group to examine the periodic reports of the States Parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) developed a set of qualitative and quantitative indicators to monitor progress in the realization of the rights provided therein. Inspired by the methodology of OHCHR, indicators on the rights to health, social security, education, work and the formation of trade unions and the rights to adequate food, a healthy environment and the benefits of culture were developed. Cross-cutting elements were incorporated, including considerations of gender and the specific rights of children and adolescents, older persons and persons with disabilities. The indicators also cover the right to ethnic and cultural diversity and the participation of civil society in formulating legislative proposals and public policies. The system of indicators will be used in drafting periodic reports of the States parties to the Protocol, assessing human rights situations and policymaking.[29]

IV. Prioritization and disaggregation

35. The protection of vulnerable and marginalized groups and those subject to discrimination is emphasized in human rights analysis. This means eliminating discrimination based on all prohibited grounds and prioritizing these groups when developing policies and programmes.

36. Measurements based on data averages do not adequately assess the realization of human rights by various groups. In its general recommendation No. 9 (1989) on statistical data concerning the situation of women, the Committee on the Elimination of Discrimination against Women underscores the importance of the use of disaggregated statistical data in order to understand the real situation of women. Several countries have integrated gender perspectives and, increasingly, a perspective on human rights of women in their statistical work and regularly produce gender statistics and indicators.[30]

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[28] See Africa Data Consensus, adopted by the High-Level Conference on Data Revolution. Available at www.uneca.org/datarevolution.

[29] See Organization of American States, "Progress Indicators for Measuring Rights under the Protocol of San Salvador" (second edition).

[30] See http://unstats.un.org/unsd/gender/default.html.

37. When indicators are disaggregated appropriately, they help identify patterns of potential marginalization and discrimination. They improve the visibility of populations who may suffer specific protection gaps resulting from policies that could have appeared neutral in the first place.

38. In Morocco, in the 2012 edition of the *Gender Budget Report* a new analytical approach based on a gender analysis of budgets from a human rights perspective was taken:

> This analytical approach is rooted in the principle that all development policies and programmes seek to ensure respect for and the realization of the human rights enshrined in the Universal Declaration of Human Rights and in other international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights. Human rights standards and principles thus constitute the main guiding norms for all development planning in every sector and during all stages of the planning process, which is based on structural and procedural indicators and outcomes for the 26 departments involved. (See E/C.12/MAR/4, para. 12, footnote 3.)

39. The principle of self-identification is important to data-gathering and statistical analysis. This principle requires that people should have the ability to self-identify as members of a particular group when confronted with a question seeking sensitive personal information about them, including in the context of data collection relevant to measuring economic, social and cultural rights, such as demographic health surveys or multiple indicator cluster surveys. In general recommendation No. 8 (1990) on membership of racial or ethnic groups based on self-identification, the Committee on the Elimination of Racial Discrimination clearly states that if no justification appears to the contrary, such identification shall be based upon self-identification of the individual concerned. The experience of the Australian Bureau of Statistics in using the principle of self-identification to count the number of indigenous peoples shows that a well-established social policy and questions on indigenous identity are crucial elements of data collection. Respondents should understand how the data will be used and the benefits of contributing to the collection of data.[31]

40. While data collection and analysis in the field of migration has improved considerably in recent years, migration policy is still often formulated in a glaring absence of data. Data on migrant stocks and the flows of the migrant population are rarely indicative of their human rights circumstances, including their access to health, education and living and working conditions. The information available often does not account for migrants in an irregular situation. In Mexico, a set of indicators have been developed within programmes under the National Development Plan that are related to the economic, social and cultural rights of migrants. In this context, a set of human rights indicators on migrants' rights to health, education and decent work, developed by OHCHR in collaboration with United Nations partners and civil society, are being used. A national consultation to assess and refine these indicators in collaboration with a wide range of stakeholders revealed that it is feasible to produce disaggregated data for migrants. This consultation elicited practical suggestions regarding existing data sources and gaps in data collection, including the need to establish a national information system on migration, which is currently under development.

[31] See Tahu Kukutai and Maggie Walter, "Recognition and indigenizing official statistics: reflections from Aotearoa New Zealand and Australia", *Statistical Journal of the IAOS*, vol. 31, No. 2, 2015, pp. 317-326.

V. Public and stakeholder participation, including in design, collection, analysis and subsequent decision-making

41. Successful measurement of human rights, supporting a truly transformative policy agenda, cannot be fully achieved without the participation and consultation of the persons concerned. As a cross-cutting human rights principle in measurement processes, consultation and participation should be the basis for designing a methodology, collecting data, analysing the results, adjusting policies and programmes and prioritizing resources.

42. South Africa has established citizen-based monitoring, which is focused on:

> The experiences of citizens in relation to government performance, in order to improve public accountability and service delivery. The approach emphasizes the building of capacity, of both citizens and officials, at the point where services are delivered in order to (i) monitor how citizens experience service delivery, (ii) analyse this feedback, (iii) take actions for improvements and (iv) communicate to all stakeholders.[32]

43. The Ministry of Justice and the National Institute of Statistics of the Plurinational State of Bolivia have signed an agreement for the joint development of human rights indicators, based on the methodology of OHCHR. The development of indicators has been included in the official statistics that the National Institute of Statistics produces regularly. The Plurinational State of Bolivia established indicators in relation to six prioritized rights, namely food, education, health, employment and housing and the right of women to live a life free of violence. Additional indicators are being developed on the right to live a life free of trafficking, the right to safe drinking water and sanitation and the right to access justice and a fair trial. The indicators were developed with the involvement of public institutions and civil society organizations and are now being used to align public policy with the recommendations issued by international human rights mechanisms. The indicators, descriptions and related data are available on a dedicated website, which allows the public to access the indicators and to follow and provide input to the work of the Steering Committee.[33]

44. According to the United Nations Human Settlements Programme (UN-Habitat), "participatory enumeration is a data gathering process which is to a significant extent jointly designed and conducted by the people who are being surveyed".[34] Data-gathering by communities can be an effective way of empowering them and engaging them in a constructive dialogue with the authorities. In the case of a railway construction in the Philippines, the Magallanes neighbourhood association understood the need for reliable information to negotiate relocation or alternatives to eviction. The association conducted a survey and gathered information to draw up a master list of local residents. The Government undertook its own survey and identified people who would be included in the relocation programme:

> When the two sides met to negotiate, the community's master list was an invaluable source of information to check against the government's list of names. There were many inconsistencies between the two lists: around one-third of the people on the association's list were nowhere to be found in the government's list: households

[32] See www.dpme.gov.za/keyfocusareas/cbmSite/Pages/default.aspx.

[33] See National Institute of Statistics of the Plurinational State of Bolivia, www.ine.gob.bo/indicadoresddhh/.

[34] United Nations Human Settlements Programme (UN-Habitat), "Count me in: surveying for tenure security and urban land management" (2010), p. 7.

headed by women, seasonal labourers or older people, and women who had separated from their husbands. Urban poor communities have many unwed couples, and the practice of listing only the man's name posed a significant risk to their unmarried partners.

In the end, the Government agreed to include people omitted from its list when supporting documents for their claims were presented. The dialogue between the State and community also led to the improvement of a number of other economic, social and cultural rights.[35]

VI. Independence at all stages of the process and legitimate decision-making

45. The design of measurement methodologies and the interpretation of the results may be biased owing to political or other factors. Therefore, the legitimacy of the measurement process and subsequent decision-making needs to be preserved through safeguards guaranteeing independence and objectivity.

46. The professional independence, scientific competence and impartiality of statistical agencies are crucial to gain the trust of the public in official statistics. Good practices in maintaining the independence of statistical agencies include: (a) the existence of laws or formal provisions on the professional independence of statistical agencies; (b) transparent procedures of recruitment; and (c) the compilation of statistics and procedures that are free from political interference.[36]

47. In Finland, the Ministry of Justice has commissioned an external evaluation of its first National Action Plan on Fundamental and Human Rights (2012-2013). Implementation of the Plan is monitored independently by a government network of contact persons for fundamental and human rights and the Human Rights Delegation, a body whose members broadly represent human rights actors in the country. Human rights indicators were developed to monitor the implementation of fundamental and human rights policies and for reporting to international human rights mechanisms.[37]

48. In 2013, the Government of Uganda launched Uganda Vision 2040, an overarching national planning framework, under which human rights is considered a prerequisite for development. The Vision was developed by the National Planning Authority in consultation with other national stakeholders and partners. In line with the Vision, the Government shall ensure that the human rights-based approach to development is integrated into policies, legislation, plans and programmes. In order to strengthen the integration of human rights into plans and to identify and refine indicators, training was given to planning officers, chief administrative officers and community development and population officers from a number of districts and thematic sectors. Several inclusive consultative workshops were conducted at the regional level, enabling local government leaders to address their human

[35] Ibid., p. 53.

[36] For other good practices, see the United Nations, "Fundamental Principles of Official Statistics: implementation guidelines" (2015). Available at http://unstats.un.org/unsd/dnss/gp/impguide.aspx. Examples of good country practices in implementing the Fundamental Principle of Official Statistics can be found in the database compiled by the Statistics Division, at http://unstats.un.org/unsd/dnss/gp/searchgp.aspx.

[37] See Finland, National Action Plan on Fundamental and Human Rights (2012-2013). Available at www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx; Finland, *Human Rights Report 2014* and www.ihmisoikeuskeskus.fi/in-english/what-we-do/monitoring-of-the-implementation.

rights priorities and concerns and to ensure integration of human rights principles into the second five-year National Development Plan.[38]

49. Some measurement methodologies focus on the negative impacts of laws, policies, programmes and development projects on the realization of rights. By providing facts and figures, these measurements help to identify and/or quantify negative effects on individuals and communities and argue in favour of changing State actions.

50. In the development context, a number of methodologies can be of particular importance. Human rights impact assessments, for example, are tools "for examining policies, legislation, programmes and projects and measuring their impact on human rights".[39] These assessments analyse the impact of an intervention on the human rights of a population, generally through indicators and other data analysis. Similarly, in the case of business activities, some research shows that companies generally do not identify, understand or aggregate the full range of costs associated with disagreement and conflict with host communities. Quantification methods have shown the financial costs of these situations for companies and States.[40]

51. Eviction impact assessments can be a powerful tool for evaluating the real costs of some projects. In many cases, calculation of the loss of income and assets for the community resulting from eviction is far beyond what was foreseen in the relocation plan. For instance, in May 2002, the inhabitants of a number of communities living on the riverside in Surabaya, Indonesia, were threatened with eviction by the municipal government. With the help of non-governmental organizations, the community gathered information on losses in social assets, economic assets and physical assets. The assessment showed an estimated loss of 238-286 billion Indonesian rupiah versus the 40 billion rupiah the government budget had allocated for relocation. In addition:

> The study found that these were well established communities with high levels of investment in their own housing and facilities; high levels of capital accumulation and circulation of money from informal economic activities in the settlements; and relatively acceptable levels of access to infrastructure and services, with the exception of drainage, adequate sanitation and paved roads.[41]

This information argued in favour of abandoning plans for relocating the communities and instead embarking on a process of renovation, which in turn positively impacted their economic, social and cultural rights.[42]

VII. Right to information and transparency at all stages of the process, including timeliness, dissemination, availability and accessibility

52. Measurement models should provide transparent and available information on the definitions, methodology, rationale, methods of computation, data sources, disaggregation levels, periodicity and limitations used.

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[38] See Uganda Vision 2040, p. 108. Available at http://npa.ug/uganda-vision-2040/.

[39] Nordic Trust Fund and World Bank, *Human Rights Impact Assessments: A Review of the Literature, Difference with Other Forms of Assessment and Relevance for Development* (2013), p. ix.

[40] See Rachel Davis and Daniel M. Franks, "Costs of company-community conflict in the extractive sector", Corporate Social Responsibility Initiative Report No. 66 (Cambridge, Massachusetts, Harvard Kennedy School, 2014).

[41] See OHCHR and UN-Habitat, "Losing your home: assessing the impact of eviction" (2011), p. 45.

[42] Ibid., sect. 3.5.2.

53. With the conclusion of the work of the Commission on Poverty, the Government of Hong Kong, China, established the Task Force on Poverty in 2007. Headed by the Secretary for Labour and Welfare, the Task Force was charged with monitoring the implementation of the recommendations of the Commission on Poverty and with coordinating the cross-governmental efforts to tackle poverty-related issues. The Task Force notably adopted 24 multidimensional poverty indicators recommended by the Commission in order to monitor the overall poverty situation:

> Among these 24 poverty indicators, 18 are life-cycle based, covering children and youth, working people and adults, as well as elders, while the remaining six are community based, reflecting the difference in poverty situation across districts. Using these indicators, we can monitor the poverty situation in Hong Kong from different perspectives and identify the needs of different disadvantaged groups and people across different districts, as a basis for the formulation and evaluation of policies to assist the needy. These indicators are updated regularly and released for the public's reference. (See E/C.12/CHN-HKG/3, para. 11.22.)

54. Scotland, United Kingdom, has developed informative videos that have been broadcasted in the media on the National Human Rights Action Plan, including short films on how human rights improve people's health and care. Information on the development of the Action Plan, as well as information on adopted indicators, implementation and monitoring, is also easily accessible through a dedicated website.[43]

55. In Mexico, the High Court of Justice of the Federal District and OHCHR developed indicators on the right to fair trial in 2010. The Court made these indicators publicly available and received a national award for innovation in providing access to information to the public in 2012.[44]

56. The right to information includes access to data and the methods used for its gathering. When based on a number of principles,[45] freedom of information and right to information acts can prove useful in overseeing the measurement of human rights at national level.

57. Rights holders are using indicators to claim their rights and monitor commitments made by Governments to remedy their situation. Together with civil society organizations, the residents of the Seven Towers apartment complex in Northern Ireland, United Kingdom, developed six indicators, including process and outcome indicators, to support their claim that their right to adequate housing had been violated. The Minister for Social Development made a commitment to improving their housing conditions by meeting the benchmarks suggested by the community, while the community regularly monitors the implementation of these commitments using the aforementioned indicators.[46] In this

[43] See Scottish National Human Rights Action Plan for Human Rights. Available at www.scottishhumanrights.com/actionplan.

[44] See www.poderjudicialdf.gob.mx/es/PJDF/Indicadores and estadistica.tsjdf.gob.mx/portal/docs/seminario1/Indicadores-Derechos-Humanos.pdf.and http://www.infodf.org.mx/web/index.php?option=com_content&task=view&id=1151&Itemid=999

[45] These principles would include maximum disclosure of information and the obligation to publish key elements, the promotion of open government and open meeting of public bodies, strictly limiting the scope of exceptions to access information, rapid and fair process of information requests with an independent review of any refusals, affordable costs of access, and protection of persons who release information on wrongdoing (whistle-blowers). See Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, second edition (Paris, UNESCO, 2008).

[46] Seven Towers Monitoring Group, "Fourth report on progress of human rights indicators", 2009. Available from www.pprproject.org/index.php?option=com_content&task=view&id=22&Itemid=33.

process, rights holders themselves have identified indicators most pertinent to their claims and collected the relevant data, including information obtained through the Freedom of Information Act.

VIII. Confidentiality and other safeguards, including human rights, ethical and statistical standards

58. The collection, use and analysis of data requires a number of human rights and ethical safeguards.[47] For instance, it is essential to disaggregate indicators in order to identify existing or potential patterns of discrimination in the enjoyment of rights concerned. Yet for some groups, if data are collected and analysed without careful safeguards, such disaggregation can lead to abuse, including by perpetuating stigma and discrimination.

59. In the first principle of the Fundamental Principles of Official Statistics, endorsed by the General Assembly, it is stated that official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information (see General Assembly resolution 68/261).

60. For the right to public information to be realized in practice, relevant statistical information must be made publicly available, on time, and in an accessible language and format, taking into account relevant considerations such as literacy levels, age, disability, language and cultural background.

61. Access to information must be balanced with the right to privacy and data protection. Individual data collected are to be strictly confidential and used exclusively for statistical purposes and this must be regulated by law. An independent body at the national level with appropriate powers to ensure compliance should supervise data protection at all stages of collection, processing and storage. Bulgaria (through the Commission for Personal Data Protection), and Romania (the National Supervisory Authority for Personal Data Processing) are examples of countries that have set up such bodies.[48]

62. For the principles stated above to be effective safeguards, their violation needs to be subject to administrative and/or judicial recourse.

IX. Conclusions and recommendations

63. **Drawing from a range of practice and experiences, in the present report, a number of necessary requirements for measuring the realization of economic, social and cultural rights have been highlighted. They include the need to:**

(a) **Clearly link human rights commitments, the processes implemented for their realization and results;**

[47] See the Declaration of Professional Ethics adopted by the International Statistical Institute in 2010. Available at www.isi-web.org/.

[48] See www.cpdp.bg/en/ and www.dataprotection.ro/. For a list of other countries in the European Union with data protection bodies, see http://ec.europa.eu/justice/data-protection/bodies/authorities/eu/index_en.htm.

(b) **Distinguish and assess elements of economic, social and cultural rights that are subject to progressive realization, as well as obligations of immediate effect and core obligations;**

(c) **Include an analysis of the prioritization and use of maximum available resources by the State;**

(d) **Inform State decision-making processes and initiate adjustments, if necessary, to ongoing policies and programmes;**

(e) **Allow for accountability of duty bearers and recourse for rights holders;**

(f) **Be transparent, subject to public scrutiny and accessible to all;**

(g) **Allow for an analysis of deprivation, gaps in equality and non-discrimination based on disaggregated data;**

(h) **Be based on the principle of indivisibility and interdependence of human rights and allow establishing linkages between various rights;**

(i) **Involve individual, community and other stakeholders in consultations and participation at all stages of the process, including design, collection and analysis of data and all subsequent decision-making processes;**

(j) **Be guided by safeguards, including confidentiality, and human rights, ethical and statistical standards;**

(k) **Stay independent, free from interference, political pressure and corruption, to ensure reliability and trust in the measurement itself and the consequent adjustments that the authorities will make.**

64. **In the light of their human rights obligations, all States should implement as soon as possible transparent, participatory and accountable human rights measurement systems, including specific indicators and benchmarks for individuals and communities on their territory or under their jurisdiction. In this context, human rights indicators are essential tools for bridging the gap between development, governance and the human rights frameworks.**

65. **The use of socioeconomic statistics alone is not enough to measure the realization of human rights, especially if they are not properly compiled and analysed in the light of human rights standards. There is a need to move from mere statistics that are not properly contextualized and interpreted to indicators and, more specifically, to human rights indicators. The information brought by the indicators must systematically be anchored in human rights standards and used effectively for the promotion and measurement of human rights.**

66. **The call for a data revolution for sustainable development in the context of the 2030 Agenda for Sustainable Development constitutes an unprecedented opportunity for the measurement of the realization of economic, social and cultural rights. Yet it could also pose challenges to human rights if it does not integrate a human rights-based approach to data and statistics. The elements for such an approach, as discussed in the present report, should include meaningful participation, disaggregation and collection of data by population groups, self-identification, privacy, transparency and accountability.**[49]

[49] OHCHR has developed a guidance note on a human rights-based approach to data, see www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

67. Human rights measurement should not be seen as a top-down exercise. Rights holders and civil society actors must be able to provide their own data and develop their own measurement tools to hold States accountable.

68. The measurement of human rights requires capacity-building, exchange of practices and partnership between entities that have traditionally not worked together, such as official statistics bureaus, civil society organizations and human rights institutions.

69. Human rights measurements and indicators should be systematically used in the context of State interaction with international human rights mechanisms, including the treaty bodies and the universal periodic review. This will improve the basis for an objective and constructive dialogue on the evaluation and evolution of human rights at the national level. In this context, the OHCHR framework for human rights indicators, which has been recommended by international human rights mechanisms, is a key tool.[50]

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[50] An increasing number of States and national stakeholders have requested OHCHR support for capacity-building activities and technical support in this field, including Albania, Chile, Côte d'Ivoire, Egypt, Gabon, Guatemala, Morocco, the Philippines, Kazakhstan, Kyrgyzstan, Serbia, Tajikistan, Togo, Tunisia, the United Kingdom and Uzbekistan.